

June 18, 2018

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In Re FLINT WATER CASES Case No. 16-10444

STATUS CONFERENCE

BEFORE THE HONORABLE JUDITH E. LEVY
UNITED STATES DISTRICT JUDGE

JUNE 18, 2018

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(Continued on next page)

**To obtain a
certified
transcript:**

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P R O C E E D I N G S

THE CLERK: The matter before the Court is In Re Flint Water Cases. Attorneys, please put your appearances on the record.

THE COURT: Thank you. We'll start with counsel table and then move over to the jury box.

MR. LEOPOLD: Good afternoon, your Honor. Ted Leopold, co-lead counsel for the class.

MR. PITT: Good afternoon. Michael Pitt co-lead for the class.

MR. SHKOLNIK: Good afternoon, your Honor. Hunter Shkolnik, interim liaison counsel for individuals.

MR. STERN: Your Honor, Corey Stern, liaison counsel for individual plaintiffs.

MS. BETTENHAUSEN: Margaret Bettenhausen for the state defendants.

MR. KIM: William Kim for City of Flint and former Mayor Dayne Walling.

MR. RUSEK: Good afternoon, your Honor. Alexander Rusek on behalf of Howard Croft.

THE COURT: Thank you.

MR. BERG: Your Honor, Frederick Berg here on behalf of the City of Flint.

THE COURT: Thank you.

MS. WEINER: Jessica Weiner on behalf of the class

1 plaintiffs.

2 MR. BURDICK: James Burdick on behalf of Adam
3 Rosenthal, your Honor.

4 MR. WEGLARZ: Todd Weglarz for plaintiff Gradine
5 Rogers and Odie Brown.

6 THE COURT: Thank you.

7 MR. WASHINGTON: Good afternoon, your Honor. Val
8 Washington appearing on behalf of plaintiff Joel Lee, the
9 Anderson plaintiffs, and a portion of the Gulla individual
10 plaintiffs.

11 MS. BINGMAN: Good afternoon, your Honor. Teresa
12 Bingman appearing on behalf of class plaintiffs and Marble
13 family plaintiffs.

14 MR. CONNORS: Good afternoon. Jordan Connors from
15 Susman Godfrey appearing on behalf of the class plaintiffs.

16 MR. NOVAK: Paul Novak on behalf of the class
17 plaintiffs.

18 MS. LEVENS: Emmy Levens on behalf of the class
19 plaintiffs.

20 MS. HANSEL: Good afternoon. Sarah Hansel on behalf
21 of a portion of the Gulla plaintiffs, the Lowery plaintiffs,
22 and the class plaintiffs.

23 MS. LINDSEY: Good afternoon, your Honor. Cynthia
24 Lindsey on behalf of class plaintiffs.

25 THE COURT: Good. Thank you.

1 MR. BRONSTEIN: Peretz Bronstein on behalf of class
2 plaintiffs.

3 MR. GAMBILL: Nathan Gambill on behalf of the state
4 defendants.

5 THE COURT: Good. Okay. Then we have some summer
6 interns and so they have joined us as well as my law clerks.
7 So why don't we start with Ms. LaBelle and then work our way
8 over.

9 MS. LABELLE: Debra LaBelle on behalf of class
10 plaintiffs.

11 MR. GOODMAN: Bill Goodman appearing on behalf of
12 class plaintiffs and the Marble family.

13 MS. HURWITZ: Good afternoon, Judge. Julie Hurwitz
14 on behalf of the class plaintiffs and the Marble.

15 MS. NAPOLI: Marie Napoli for individual plaintiffs,
16 your Honor.

17 THE COURT: Thank you.

18 MR. NAPOLI: Paul Napoli on behalf of individual
19 plaintiffs. Good afternoon, your Honor.

20 THE COURT: Okay. Good afternoon.

21 MR. MITCHELL: Your Honor, Matt Mitchell on behalf of
22 the Guertin plaintiffs here today in the place of David Hart.

23 THE COURT: Thank you.

24 MR. MASON: Thank you, your Honor. Wayne Mason on
25 behalf of the LAN defendants as well as Phil Erickson, my

1 co-counsel.

2 MR. GRUNERT: John Grunert on behalf of the three
3 North American Veolia defendants.

4 MR. CAMPBELL: Good afternoon, your Honor. James
5 Campbell. I represent also the three North American Veolia
6 defendants.

7 MR. WILLIAMS: Good afternoon, your Honor. Michael
8 Williams on behalf of the Veolia North American defendants.

9 THE COURT: Welcome back.

10 MR. WILLIAMS: Thanks.

11 THE COURT: We have another case going on right now.

12 MR. BARBIERI: Your Honor, Charles Barbieri for
13 Patrick Cook and Michael Prysby.

14 MR. GRASHOFF: Philip Grashoff, your Honor. Good
15 afternoon, on behalf of Stephen Busch.

16 MR. PATTWELL: Good afternoon, your Honor. Michael
17 Pattwell on behalf of Dan Wyant and Brad Wurfel.

18 MR. MORGAN: Thaddeus Morgan on behalf of Liane
19 Shekter Smith.

20 MR. THOMPSON: Craig Thompson for defendant Rowe
21 Professional Company.

22 THE COURT: Good. Thank you.

23 MR. SIMPSON: Good afternoon, your Honor. John
24 Simpson on behalf of individual plaintiffs.

25 MR. RABIN: Good afternoon, your Honor. Jonathon

1 Rabin on behalf of defendant Hurley Medical Center and
2 individual defendants Birchmeier and Newell.

3 THE COURT: Thank you.

4 MR. BLAKE: Good afternoon, your Honor. Jayson Blake
5 on behalf of the state court class plaintiffs.

6 MS. MCGEHEE: Good afternoon, your Honor. Cary
7 McGehee on behalf of class plaintiffs.

8 MR. HOMA: Good morning, your Honor. Jonathon Homa
9 on behalf of individual plaintiffs.

10 MR. RADNER: Good afternoon, your Honor. Solomon
11 Radner on behalf of the Washington plaintiffs.

12 MS. SEALEY: Good afternoon. Shermane Sealey behalf
13 of class plaintiffs.

14 MR. LARSEN: Good afternoon, your Honor. Zach Larsen
15 on behalf of state defendants.

16 MS. SMITH: Good afternoon, your Honor. Susman Smith
17 on behalf of McLaren.

18 MR. KLEIN: Good afternoon, your Honor. Sheldon
19 Klein for City of Flint.

20 MR. MENDEL: Good afternoon, your Honor. Todd Mendel
21 and Eugene Driker on behalf of Governor Snyder.

22 MR. WOLF: Good afternoon, your Honor. Barry Wolf on
23 behalf of Gerald Ambrose.

24 THE COURT: Thank you.

25 MR. CAFFERTY: Good afternoon, your Honor. Michael

1 Cafferty on behalf of defendant Nancy Peeler.

2 MR. WISE: Good afternoon, your Honor. Matt Wise on
3 behalf of Jeffrey Wright.

4 MR. KRAUSE: Good afternoon, your Honor. Kurt Krause
5 on behalf of defendant Robert Scott.

6 MR. WILSON: Good afternoon, your Honor. Ken Wilson
7 appearing on behalf of Darnell Earley. Also with me here on
8 behalf of Mr. Earley is James McGinnis.

9 THE COURT: Oh, okay. Hi, Mr. McGinnis.

10 MR. SHARP: Good afternoon, your Honor. Ryan Sharp
11 for the Washington plaintiffs.

12 MR. CUKER: Good afternoon, your Honor. Mark Cuker
13 for individuals plaintiffs.

14 MR. SANDERS: Good afternoon, your Honor. Herb
15 Sanders for the Alexander plaintiffs.

16 THE COURT: Okay.

17 MR. SHEA: Good afternoon, your Honor. David Shea on
18 behalf of the class plaintiffs.

19 MS. FLETCHER: Good afternoon, your Honor. Shayla
20 Fletcher on behalf of the Alexander plaintiffs.

21 MR. MEYERS: Good afternoon, your Honor. David
22 Meyers on behalf of Dougherty Johnson.

23 MR. MEYER: Good afternoon, your Honor. Brett Meyer
24 appearing on behalf of defendant Michael Glasgow.

25 THE COURT: Well, I think that's enough. So thank

1 you, all, for being here. Let me mention someone who is also
2 here. We have been joined today by Judge Yuille, who is
3 Genesee County judge who is handling many -- there's Judge
4 Yuille. Many of the state court individual cases and two
5 class actions in the state court in Genesee County. So he was
6 able to be here today and I appreciate it a great deal.

7 Prior to this hearing, we met in chambers. Judge
8 Yuille and myself and sort of the executive leadership of both
9 the plaintiffs and the defense lawyers in this case to prepare
10 both for this hearing today and also to generally discuss
11 issues that are pending in these cases. And it was
12 tremendously helpful to have Judge Yuille there. So thank
13 you.

14 I want to remind everybody that when you speak you
15 need to identify your name. You don't have to say all of your
16 clients at that time. And if you're going to say more than
17 one or two words, I need you to come up and speak into a
18 microphone so that both I can hear you.

19 I could probably hear you because you're projecting
20 this way. But so that your co-counsel and others who are here
21 can hear you as well.

22 So on June 8th, I issued an agenda for this status
23 conference. The first one begins with the cross motions to
24 replace individual co-liaison counsel Mr. Shkolnik and
25 likewise his motion for interim co-lead counsel to be removed

1 and replaced. And in that agenda item, I indicated that there
2 would be oral argument on those motions.

3 And in between June 8th and today, I have determined,
4 having re-read the motions, the responses, all of the
5 briefing. There was -- was it Veolia also weighed in or LAN?
6 Can you remind me? Veolia.

7 MR. CAMPBELL: Perhaps more than two words. But I
8 think we just --

9 MADAM COURT REPORTER: State your name.

10 THE COURT: That's right.

11 MR. CAMPBELL: James Campbell. Sorry. First one up
12 and I missed it. James Campbell. We did, your Honor. Just a
13 brief regarding legal issues.

14 THE COURT: Yes. Exactly. And I appreciated that.
15 So in lieu of oral argument, I have reached a decision and I
16 have an oral opinion that I would like to present to you.

17 On April 25th of 2014, the source of water for the
18 City of Flint Michigan was changed from Lake Huron
19 administered by the City of Detroit Water and Sewerage
20 Department to the Flint River at the direction of a number of
21 the defendants named in this case.

22 Soon thereafter, Flint residents began to complain
23 about the unusual color and unpleasant smell of their potable
24 water. They also reported rashes and other problems connected
25 to the use of city water.

1 Later elevated blood levels -- blood lead levels were
2 detected and some individuals became critically and even
3 terminally ill with Legionnaires' disease which they allege
4 resulted from the change in water sources.

5 The story has many, many more details, some of which
6 are contested by the defendants and many of which are not.

7 On January 27th of 2016, the first federal lawsuit
8 over what this Court will refer to as the "Flint Water
9 Contamination Crisis" was filed. Soon, many more complaints
10 were filed here in the Eastern District of Michigan, the
11 Western District of Michigan, Genesee County Circuit Court
12 where there are cases pending before Judge Yuille and Judge
13 Fullerton. There are also criminal cases in Genesee County as
14 well as cases filed in the Michigan Court of Claims and
15 undoubtedly other courts and venues as well.

16 These cases have been considered by all of these
17 courts as well as the Michigan Court of Appeals, the Michigan
18 Supreme Court, the Sixth Circuit Court of Appeals, and the
19 United States Supreme Court. Criminal charges have been
20 lodged against many of the individual defendants and hours
21 upon hours of testimony have already been taken in those cases
22 as they wind their way through the system.

23 By any definition, this is complex litigation. It
24 has already required the time and attention of scores of
25 judges, lawyers, experts, and mediators.

1 This Court now has the vast majority of the pending
2 cases in this district that seek money damages for personal
3 and property damages related to the water contamination
4 crisis. In order to manage this litigation as effectively and
5 efficiently as possible, I appointed interim co-lead class
6 counsel and co-lead liaison counsel for the cases filed by
7 individuals.

8 Various procedural and substantive motions have
9 already been adjudicated here all in an effort to ensure that
10 this litigation continues to move forward in a fair and
11 efficient manner.

12 To date, those impacted by this crisis continue to
13 wait to see how the litigation will proceed without any sign
14 of the relief they seek. And those who have been civilly sued
15 and criminally prosecuted face mounting legal bills,
16 uncertainty, and the prospect of paying a high penalty either
17 financially or with their liberty or both.

18 Everyone is reliant on their lawyers to represent
19 them zealously and appropriately.

20 Then in March of this year, class counsel filed a
21 motion to have Mr. Hunter Shkolnik removed from his leadership
22 role from the individual plaintiffs. Class counsel alleged
23 that Mr. Shkolnik had a retainer agreement that while lawful
24 in some states is not permitted in Michigan where attorney
25 fees are capped in a case of this nature at one third of the

1 recovery.

2 They also alleged that Mr. Shkolnik was soliciting
3 clients in violation of the Michigan Rules of Professional
4 Conduct, specifically at a town hall meeting at a church. I
5 have read the transcript of the meeting and reviewed the
6 retainer agreements as well as the now modified retainer
7 agreements.

8 Mr. Shkolnik responded to those allegations by
9 denying the solicitation charge and changing the retainer
10 agreements, but he then filed what I saw as a more forceful
11 and in many ways more substantive motion to have the interim
12 co-lead class counsel removed.

13 Shkolnik informed the Court that interim co-lead
14 class counsel had demanded to be in charge of distributing
15 common benefit work and collecting and managing any common
16 benefit time and expense order.

17 He informed me that interim co-lead class counsel had
18 communicated with putative class members in a misleading way
19 implying that the case was already certified as a class and
20 discouraging individuals from signing up with Shkolnik or
21 Stern or any of the other plaintiffs' counsel here in
22 violation of both the professional rules of conduct and the
23 Federal Rules of Civil Procedure.

24 He further accused the interim co-lead class counsel
25 of entering into what he called -- and I'm quoting from his

1 brief -- secret side fee deals regarding work and hours that
2 it intended to hide from a third party audit.

3 Next Mr. Shkolnik brought to my attention several
4 conflict of interest issues. His motion pointed out that Mr.
5 Pitt is seeking class certification for a class that has both
6 current and future damages, something that can cause a class
7 to be rejected or a court to be reversed if it were certified
8 and the work undone.

9 Even if it is a settlement only class. He also
10 pointed out that Mr. Pitt is holding himself out as class
11 counsel in this case while he is also representing over 1,000
12 individuals in a piece of Flint Water litigation against the
13 environmental protection agency that's pending before Judge
14 Linda Parker seeking the same damages he is seeking in a class
15 in this case, setting up a potential conflict of interest that
16 could disturb the outcome in this case if it's not addressed.

17 I note that interim co-lead class counsel changed
18 their newsletter so that it would not announce that they are
19 already -- that there is already a class when there is not
20 currently a class certified in this case.

21 I've given these motions a great deal of thought.
22 They have made national law media and they have been even been
23 covered in some more widely distributed media venues. I
24 understand that the Federal Rules of Civil Procedure as well
25 as the inherent authority I have as a judge in this case that

1 I have the authority to remove counsel from these leadership
2 roles or to direct them to correct the problems.

3 There's no shortage of lawyers, as can be evidenced
4 in this courtroom this afternoon. I certainly can remove
5 counsel, add others to assist if the work cannot get done in a
6 professional responsible and ethical way.

7 As I said at the beginning of my involvement with
8 this case, everyone in this room has a critically important
9 role in this litigation. My job is to manage the litigation
10 in a manner that's fair to all parties on both sides of the V.
11 I am doing my level best to do this in an efficient manner and
12 to oversee this litigation in a way that will allow the
13 parties to develop the facts and legal arguments in the most
14 efficient way.

15 The Sixth Circuit will let me know if they disagree
16 with the legal decisions I make. And history will tell us if
17 I failed to manage this litigation in a way that requires it
18 to proceed in a fair and efficient manner.

19 Defense counsel are doing their job as can be seen by
20 the volume of motions to dismiss that I'm currently reading
21 and working on. Plaintiffs' counsel, and I apply that, are
22 required to live by the rules, to work zealously on behalf of
23 your clients. You don't need me to tell you that your clients
24 are counting on you.

25 I believe that the allegations against the interim

1 co-lead counsel are well documented and are serious. I
2 appreciate the original retainer agreement that Mr. Shkolnik
3 was using having been brought to my attention by Mr. Pitt and
4 Mr. Leopold and that has now been corrected.

5 Separately from anything brought forward in the
6 motion to remove Mr. Shkolnik, I'd like to add that the Bryant
7 request for a preliminary injunction or temporary restraining
8 order that was filed by Mr. Shkolnik and joined by Mr. Stern
9 seeking to have distribution of bottled water resumed in Flint
10 should have never been filed.

11 Due diligence was not exercised and at the conclusion
12 of the hearing I carefully weighed whether a monetary sanction
13 would be appropriate. Ultimately I decided against it. What
14 I want in these cases is for counsel to work hard, to work
15 carefully, and to seek relief that is warranted by the facts
16 and the law. Nothing more or less than that.

17 After a great deal of consideration, I am prepared to
18 deny both pending motions to fire the various counsel. I
19 agree that important and serious allegations have been leveled
20 and some of those violations relate to the Michigan Rules of
21 Professional Conduct.

22 So I am not denying the motions because they lack any
23 merit. I'm denying them because I believe the currently
24 appointed plaintiffs' lawyers are capable of living up to the
25 rules that govern their practice.

1 Mr. Stern set this forward in his affidavit relating
2 to these indicating that in his opinion -- and I agree -- that
3 each of these counsel who have various allegations against
4 them have despite those allegations worked very hard to move
5 these cases along and have expended tremendous resources and
6 talent in doing that.

7 I have watched what's going on in this case at all
8 levels to the extent that I can. And I can assure every one
9 of you in this room that my only concern is what I have set
10 forth above -- to see this case through in a fair and
11 impartial manner. I have no sympathies or allegiances or
12 anything at all for anyone in this room that rises above that.
13 I can assure you that my eyes are open and have been
14 throughout this process.

15 I may be a relatively new judge on a relatively new
16 job and I may be a relatively patient person, or at least I
17 might come across in that manner at times. But I have zero
18 tolerance for professional misconduct, for manipulating the
19 process, and for taking advantage of the people of Flint for
20 personal gain.

21 I understand that attorney fees are an important part
22 of this process and I'm not critical of that. You will not
23 hear me railing here or anyone else against plaintiffs'
24 lawyers being paid a fair fee. You are a part of the legal
25 system that protects every one of us in this room from drugs,

1 products, and other contaminants that can harm all of us and
2 our families.

3 Whether we know it or not, we rely on you and your
4 colleagues' work throughout this country. But that is only
5 true if the players in this system play by every one of the
6 rules that has been set forth and only then.

7 So as a result of these motions, I have determined
8 that I will be appointing a special master pursuant to Federal
9 Rule of Civil Procedure 53 to assist me in managing the
10 litigation. The master will have oversight of the common
11 benefit, time, and expense order and will report to me on a
12 regular basis.

13 The special master will have copies of these motions
14 to ensure that her or his eyes are wide open as to some of the
15 issues that led to the appointment of the master. If the
16 currently appointed plaintiffs' leadership team cannot fulfill
17 their duties, I will add positions or remove individuals if
18 necessary.

19 And I've determined that the current leadership
20 appointments will have terms of one year after which counsel
21 can reapply to the positions along with any other lawyers who
22 wish to apply. There will be no term limits but there will be
23 terms. And in my thinking there is no president for life in
24 this litigation.

25 So that will conclude the portion of the hearing

1 related to these motions. And in the order, case management
2 order following this hearing, I will set a time period for --
3 related to the special master appointment which is going to be
4 discussed somewhat later.

5 I will also determine when the one year -- counsel
6 has essentially been in the job for one year. I would
7 anticipate counsel to continue, but I am certainly open to
8 applications from other lawyers as well. But I'll probably
9 set that in three or four months from now during which
10 individuals can apply, including those who are filling the
11 positions.

12 So that will constitute the order on the cross
13 motions to remove various lawyers.

14 The next item on the agenda is the time and expense
15 order. And I want to thank counsel very much for agreeing to
16 a proposed order. And I received two sets of objections to
17 the time and expense order. I have considered those
18 carefully. I also received feedback from -- was it Mr.
19 Campbell? Yes, Mr. Campbell.

20 And so what I have done is I took the time and
21 expense order that was stipulated and agreed upon and I have
22 changed about three words in it and that will -- I will tell
23 you right now one of them related to Mr. Campbell's suggestion
24 regarding confidential information and attorney work product.

25 And it simply takes out on a footnote that some of

1 these records that would relate to time and expense for a
2 common benefit, it takes out that they might contain
3 confidential information and simply says shall not be
4 disclosed to defendants without further court order or written
5 stipulation of the parties.

6 So you can tell me if it's -- what it is. If it's
7 confidential information, if it's attorney work product, if
8 someone's seeking a court order to turn it over. It could be
9 more than that. It could be client's private information. So
10 it just expands in some ways the protection of what's being
11 submitted.

12 The only other -- I included on paragraph 18 a new
13 sentence saying all counsel shall avoid block billing. I
14 think this is pretty clear that there's not going to be block
15 billing. It's in tenth of an hour increments. But to make it
16 very clear, that is inserted in there. And I think that is
17 the only other change.

18 I would like to indicate that I took into
19 consideration the other objections, but I found that this
20 order accommodates some of the concerns that were set forth,
21 which is that the Court ultimately has the authority to review
22 any submission and accept or reject it.

23 And this does set forth an independent third party.
24 It currently says accounting firm, which is what I had
25 envisioned. But I think we will have a special master who

1 based on who that is we will make sure -- I have a proposal
2 for one, but we will make sure that that person has experience
3 with case management orders regarding time and expense.

4 So is there any further objection based on those two
5 small changes?

6 MR. SHKOLNIK: Nothing from liaison counsel, your
7 Honor. Thank you, very much.

8 MR. LEOPOLD: Nothing from co-lead, your Honor.

9 THE COURT: Okay. Then that will be entered at the
10 conclusion of this hearing. The issue is that it still has a
11 parentheses for who is actually going to review this material
12 in the first instance. And we will -- well, why don't we just
13 get to that right now.

14 Which is that a moment ago I indicated that I am at a
15 point in this litigation where I think a special master would
16 be of tremendous help to me in this case. And I met with
17 several people and -- well, talked extensively with several
18 people and met in person with one. And her name is Deborah
19 Greenspan. She is a partner at Blank Rome in Washington, D.C.

20 She has 15 years of special master experience,
21 including administering the September 11th Victim Compensation
22 Fund and deputy special master in the September 11th Victim
23 Compensation Fund work in the first instance, special master
24 in an Agent Orange product liability litigation. And many
25 others.

1 She's a speaker around the country on effective work
2 as a special master. One of the strengths I think that Ms.
3 Greenspan can bring to this process is she has experience
4 coordinating between state and federal litigation in the
5 multidistrict litigation context as well as class action
6 context.

7 But I will set two weeks from today as a date by
8 which all counsel in this case can -- well, what we'll do is
9 use co-liaison counsel to assimilate or collate proposals from
10 any individuals. And co-lead class counsel will submit their
11 recommendations. And defense counsel may all weigh in on this
12 within two weeks.

13 And if you have no objection to Ms. Greenspan, you
14 can certainly just indicate that. If you have a new proposal,
15 someone else who you think would be good for the position, you
16 can file that person's name as well as some identifier so I
17 can look the person up.

18 Ms. Greenspan has indicated that she does have the
19 time, attention, and ability to work on this case. She's from
20 Michigan, has family in Michigan, and has other cases here.
21 And she would also take the time to come in and meet with
22 counsel so she -- prior to any decision being made.

23 So is there anything on the issue of -- the potential
24 duties of the special master at this point would be limited to
25 administering the time and expense reporting, managing a

1 census order if we end up where a census order -- and we'll
2 discuss that one fully -- coordinating with the state court
3 litigation, and potentially some assistance with discovery.

4 But for now until the case is further down the road,
5 I'll continue to handle discovery issues. Mr. Leopold.

6 MR. LEOPOLD: Your Honor --

7 THE COURT: State your name in case I got it wrong.

8 MR. LEOPOLD: You got it right. Ted Leopold, co-lead
9 for the class. Your Honor, just one question. In terms of
10 the time and expense order, will that begin at the time that
11 the court enters the order so that we can begin to accumulate
12 information --

13 THE COURT: Yes.

14 MR. LEOPOLD: -- and be able to provide it to the
15 special master when he or she --

16 THE COURT: Yes.

17 MR. LEOPOLD: -- or Ms. Greenspan will be appointed?

18 THE COURT: Thank you. It will. Because I think it
19 includes a line in it where records are submitted on the --
20 the first submission is due on the 15th of each month. So it
21 wouldn't -- at the earliest it would be July 15th. But it
22 will be the 15th of the month after which an appointment is
23 made.

24 Depending on names that are submitted and
25 consideration given to other names for a special master, it

1 could take a little bit of time to identify the person and
2 have them in place.

3 MR. SHKOLNIK: Your Honor, if I can just be heard?
4 Hunter Shkolnik. With respect to the first filing of time and
5 expense, we would ask that the Court put that off for 60 days
6 so that any attorney that has to collect the time and get it
7 in proper format has a little bit of breathing room between
8 now and the 15th of July. So we can have the first submission
9 on I think we're in June, August 15th.

10 THE COURT: Okay.

11 MR. SHKOLNIK: Thank you.

12 THE COURT: I think that's a good idea.

13 (Pause in Proceedings)

14 THE COURT: Jeseca's computer has decided that it
15 needs some software updated right now. Let's just be in recess
16 for about five to ten minutes.

17 (Brief Recess)

18 THE COURT: Please be seated. Okay. Well, that
19 takes care of the time and expense order.

20 We're now on the portion of the agenda related to
21 issues with short form complaint filings. The first case that
22 I've identified is Alexander v Lockwood, Andrews, and Newnam.
23 And I believe there was an amended case filed very recently.
24 Who filed that?

25 MR. SHKOLNIK: Your Honor, I believe --

1 THE COURT: Oh, Mr. Sanders.

2 MR. SANDERS: Yes, that is accurate, your Honor.

3 THE COURT: Could you identify yourself?

4 MR. SANDERS: Herb Sanders on behalf of the Alexander
5 plaintiffs.

6 THE COURT: And the issue there is that it was
7 difficult, if not impossible, to know which of your many
8 plaintiffs have which damages. And you amended that because
9 it looked like everybody had legionella and everybody had lead
10 poisoning and so on.

11 And so what I need to know is whether the defendants
12 have received that. You would have by electronic case filing.
13 But whether it is now clear to you.

14 MR. GRUNERT: Your Honor, John Grunert. For reasons
15 I don't understand, my office, in fact, didn't receive that.
16 And I first saw a copy of it when I was having lunch today.
17 And what your order had been was that Mr. Stern and I were
18 supposed to confer about the problems, reach an agreement, and
19 that there would be an amended complaint.

20 Mr. Stern and I did confer. We did reach an
21 agreement. But I simply haven't had time yet to see if the
22 agreement has been executed so that the problem is resolved.

23 I would ask simply that you give us another week or
24 two to make sure that it's been resolved or if it hasn't been
25 resolved to find a way to resolve it. We had no problem

1 reaching an agreement. It's just we don't know whether it's
2 been executed. Mr. Stern told me that he hasn't seen it yet
3 either, so.

4 THE COURT: Okay.

5 MR. GRUNERT: That's where we stand.

6 THE COURT: All right. Well, thank you, Mr. Grunert.
7 Mr. Stern, do you have anything to add?

8 MR. STERN: Your Honor, Corey Stern for the
9 plaintiffs. I agree. And it's actually -- that point is
10 probably applicable to the list that's here. The Alexander
11 case we did reach an agreement and then the Alexander case was
12 re-filed. Brown and Rogers are both cases that are recently
13 filed and served cases that were filed I believe by your firm,
14 right?

15 MR. WEGLARZ: Correct.

16 THE COURT: And who said correct?

17 MR. WEGLARZ: I'm sorry. Todd Weglarz, your Honor.

18 THE COURT: Thank you. But let me stop you. Brown
19 and Rogers, one of the issues is that they were filed with the
20 wrong case captions so they need to have their own case
21 caption filed. They have their own unique number, 10726 and
22 10713. So I believe they were filed in 16-10444.

23 MR. STERN: It's a -- sorry. Corey Stern, again.
24 It's a confusion between filing the case in the master case,
25 which is the Waid case, versus in these individual short form

1 complaints filing them in the case in which they were
2 originally filed.

3 THE COURT: Yes.

4 MR. STERN: So like we did with Mr. Grunert and with
5 the Washington plaintiffs, if we can have two weeks I think we
6 would easily be able to just have them re-filed in a way that
7 -- how it likely should have been done. But it's probably on
8 me for not having explained the first time around exactly what
9 the procedure was.

10 So it's not the lawyers who messed it up as much as
11 it was probably me telling them to do it in a way that was
12 incorrect.

13 THE COURT: Okay. So let's take two weeks from today
14 to get that done. And in the Alexander I heard Mr. Grunert
15 ask for one week, but we'll keep all the dates the same. So
16 that will also be two weeks to let the Court know if the
17 solution is adequate.

18 And in Marble v Snyder, there are case 17-12942.
19 There are expired summonses of unserved defendants. And there
20 are quite a few of them, if I'm not mistaken. Mr. Goodman.

21 MR. GOODMAN: William Goodman on behalf of the Marble
22 plaintiffs. I believe that we have received waivers from all
23 counsel in that regard with regard to the service of the
24 summonses, your Honor and all of the defendants in the --
25 excuse me, from all of the defendants in the case. All of the

1 defendants in the case have also filed motions to dismiss,
2 which I think is basically indicative of the progress of the
3 case.

4 THE COURT: That is indicative of progress serving
5 people.

6 MR. GOODMAN: While I'm standing here, if I may have
7 permission to raise one issue. We have asked all counsel, all
8 defense counsel in this case, for an extension of time to
9 respond. Currently the response date I think is the 29th of
10 this month and we've asked for another approximately six weeks
11 until August 17th. I don't know if that would --

12 THE COURT: To respond to the motions to dismiss?

13 MR. GOODMAN: To dismiss, correct.

14 THE COURT: The problem with that is that we
15 currently have an oral argument on September 26th. Can you
16 shorten that to one month instead of six weeks?

17 MR. GOODMAN: Yes, certainly.

18 THE COURT: Okay.

19 MR. GOODMAN: So that will be July 29?

20 THE COURT: Probably. That's got to be close.

21 MR. GOODMAN: Within -- if it's a non weekend,
22 something like that.

23 THE COURT: Something right around there.

24 MR. GOODMAN: Okay.

25 THE COURT: We'll put it in the order.

1 MR. GOODMAN: Thank you, your Honor.

2 THE COURT: Thank you. Mr. Grashoff.

3 MR. GRASHOFF: May it please the Court, Philip
4 Grashoff appearing for Stephen Busch. Two things going back
5 to Alexander. The amended complaint in Alexander contains the
6 same allegations that were stricken from an earlier complaint
7 with respect to the criminality of the state of the criminal
8 proceedings and what our clients are being charged with.

9 We want -- request the Court to direct them to remove
10 that language from the complaint as they did the first time.

11 MR. STERN: Your Honor, if I may?

12 THE COURT: Yes.

13 MR. STERN: Corey Stern, again. My guess is what Mr.
14 Grashoff is referring to is a previous class complaint that
15 there was a major issue that was resolved before your Honor
16 where there was some language on the record. My other guess
17 is that once Mr. Grunert and LAN look at the complaint, they
18 may have some issues with it.

19 So my guess is it's going to be amended again in the
20 next two weeks. If it's not, we will put in the same
21 language. I will talk to the Alexander plaintiffs and make
22 sure that they're aware of the language that your Honor
23 approved for the class complaint. And if it's in conjunction
24 with the further amendment to modify the complaint in a way
25 that's more sufficient for the defendants, they'll go together

1 at that same time within two weeks.

2 THE COURT: Okay. Thank you.

3 MR. GRASHOFF: As long as we can see this modified
4 amended complaint and make sure the language is not there,
5 we're fine with that.

6 THE COURT: Okay. Good.

7 MR. GRASHOFF: I'm just full of objections, your
8 Honor.

9 THE COURT: That's all right. Oh, you have more.

10 MR. GRASHOFF: I have more. Marble. I want to
11 clarify. The seven MDEQ defendants have not agreed to waiver
12 service in that case. We have been --

13 THE COURT: They may not have agreed to waive
14 service, but will they agree to an extension of the summons?

15 MR. GRASHOFF: We can do that.

16 THE COURT: Okay. That's all --

17 MR. GRASHOFF: If that's where you're going, we're
18 fine with that.

19 THE COURT: Yeah.

20 MR. GRASHOFF: But we won't accept service of an
21 expired summons.

22 THE COURT: But we can extend -- has the summons
23 expired already?

24 MR. GRASHOFF: Yes.

25 THE COURT: It has, okay. Yeah, it has.

1 MR. STERN: I may be helpful here, your Honor.

2 THE COURT: Okay. Good.

3 MR. STERN: In the cases -- in many of the cases that
4 were filed by individual plaintiffs, the state and we worked
5 out a stipulation that was filed in each of those cases
6 regarding expired summonses. Margaret Bettenhausen actually
7 drafted the stipulation.

8 THE COURT: Okay.

9 MR. STERN: And it may be applicable to this
10 particular case, but there's a way to do it without getting a
11 new summons.

12 THE COURT: That sounds like a good approach. And
13 I'm ready to suggest that we follow that.

14 MR. GRASHOFF: We'd be delighted to look at whatever
15 stipulation is out there and confer with Mr. Goodman.

16 MR. GOODMAN: Agreed, your Honor.

17 THE COURT: Thank you. Then that's what we'll do.

18 MR. STERN: Judge, on some level if there's a way for
19 any of these issues to flow through liaison counsel, it may
20 just make this -- it may lessen the burden on the court to
21 have to deal with some of them.

22 THE COURT: Okay. All right. Yes.

23 MR. ERICKSON: Your Honor, Philip Erickson. There
24 was another issue with respect to the Brown and Roger cases
25 that's noted on your agenda and that is the existence of new

1 causes of action. And these are probably not going to be the
2 only two cases where there are new and different causes of
3 action that are set forth in the master individual complaint.

4 But we request that it be put on the agenda as an
5 example so that we can start thinking about the process of,
6 you know, how do we address new and different causes of
7 action. And we're not asking you to decide how to do that
8 today. But we need to be thoughtful about how to approach
9 that.

10 THE COURT: Yeah. I appreciate that, Mr. Erickson,
11 because we are starting to set dates and times for oral
12 argument in figuring out who needs to argue and if there are
13 new causes of action not in Walters or Sirls and so on, we'll
14 have to make sure they get addressed.

15 MR. ERICKSON: Okay.

16 THE COURT: Thank you.

17 MR. ERICKSON: Thank you.

18 THE COURT: Okay. So the July 11th, 2018, hearing on
19 the motion to -- the many, many motions to dismiss the Carthan
20 master class action, that will begin at 10:00 AM. It will
21 conclude that day. We know that. There will be an
22 opportunity to take a break for lunch if we get to that point,
23 which I would anticipate we would.

24 The Veolia defendants have filed a motion to strike
25 the proposed classes. It's my position that that should be

1 handled at a later date and will be handled at a later date
2 when we know what all of the claims are that are going forward
3 and against which defendants.

4 At that point it makes sense to adjudicate further on
5 down the road the definition of the classes. So at this point
6 that motion will just be held in abeyance and I will certainly
7 give the Veolia defendants the opportunity to re-file it if
8 there are different -- a different set of claims and a
9 different group of defendants.

10 So the oral argument itself, what I have identified
11 -- of course I issued the Guertin opinion. I listened to the
12 Sixth Circuit's oral argument in that case. I've read some of
13 those briefs, not every one of the Sixth Circuit briefs, but
14 at least done what I can to keep up to speed on how the legal
15 arguments are developing.

16 So what is most helpful to me is to address issues
17 that were not a part of that case starting out beginning with
18 equal protection, race, and wealth and going on down this
19 list. I have the substantive due process bodily integrity
20 here in the event that there's a defendant who wishes to argue
21 about that with something that was not already discussed at
22 the Sixth Circuit or maybe refining your argument based on the
23 questions asked in that hearing.

24 So what we'll do is take each of those topics, hear
25 from the moving parties, hear a response, very brief rebuttal,

1 and then move on to the next topic.

2 The next item is kind of self explanatory, dismissal
3 of claims and parties in cases. The Sixth Circuit does not
4 permit partial voluntary dismissals of fewer than all claims
5 and parties. Who knew that that needs to be like that? But I
6 live by what they tell me. So there are alternatives, which
7 is dismissing parties and claims by amending your complaint or
8 stipulating to a dismissal of claims with the other side.

9 But I ask that you consider that option because the
10 alternative is having the entire case dismissed, having it
11 re-filed. None of us here gets the filing fee of \$450, so and
12 even if we did, we would not want to collect it unnecessarily.
13 So I just ask that you consider what can be done by agreement.

14 MR. GRASHOFF: Your Honor?

15 THE COURT: Yes. Mr. Grashoff.

16 MR. GRASHOFF: Philip Grashoff, again. So we have
17 nothing left outstanding, Chapman v Snyder, the previous page
18 was not discussed.

19 THE COURT: Oh.

20 MR. GRASHOFF: I believe Mr. Cuker is here. I think
21 we've --

22 MR. CUKER: Yeah, I'm here. We filed --

23 THE COURT: State your name.

24 MR. CUKER: Mark Cuker for the Chapman plaintiffs.

25 We filed an unopposed motion to extend time. Your Honor

1 signed it on Friday.

2 THE COURT: Yes.

3 MR. CUKER: So I think it's a moot point.

4 THE COURT: Exactly. I'm sorry. I had written my
5 note that that has been taken care of. So thank you, Mr.
6 Grashoff. Mr. Klein?

7 MR. KLEIN: Good afternoon, your Honor. Sheldon
8 Klein for the city. Going back to the question of the
9 dismissal of claims. I just want to be clear, make sure that
10 I understand the dismissal would be with prejudice if the
11 claim is being dropped.

12 THE COURT: If a claim is being dropped -- well, I'd
13 have to give that some thought. I mean it depends on if
14 they're dismissing a claim or a party. They can inform me
15 whether -- I mean maybe they're trying to bring it in state
16 court. I don't know. So I would want to be informed by the
17 parties of what they think it should be.

18 MR. KLEIN: I have a specific context in mind.

19 THE COURT: Okay.

20 MR. KLEIN: And if you want us to deal with it later,
21 that's fine.

22 THE COURT: What is the context?

23 MR. KLEIN: In the context of already briefed motions
24 to dismiss, there are -- there is at least one claim which is
25 being, quote, unquote, withdrawn expressly with words to the

1 effect of without prejudice. They didn't use those words.

2 It strikes me as inappropriate to be hit with the
3 motion to dismiss implicitly at least seeing that, yeah,
4 there's no claim there and yet somehow trying to preserve the
5 fight for another day.

6 THE COURT: Okay. Well, why don't we deal with that
7 when we get to that argument. I appreciate you flagging it.
8 Then there will be an oral argument in the Walters, Sirls, and
9 Marble case on September 26th at 10:00 AM. I will do my best
10 to send out some sort of order regarding the order in which
11 issues will be argued in that case as well.

12 But the same thing will apply to that. If it's been
13 thoroughly and exhaustively argued in the Carthan case, what I
14 would want you to focus your remarks on is something that was
15 not said there. And that reminds me that Mr. Stern had
16 requested some time during the oral argument -- either you or
17 your designated lawyer -- to raise issues in the argument on
18 Carthan. And that will be permitted. And I would just
19 caution you again just to raise things that have not
20 previously been argued.

21 MR. STERN: Thank you, your Honor.

22 THE COURT: So okay, the motion to amend the Carthan
23 case will be addressed at the September 12th status
24 conference.

25 MR. STERN: Your Honor?

1 THE COURT: Yeah.

2 MR. STERN: I think you just said -- I'm sorry to
3 monopolize --

4 THE COURT: Oh, no. I think you're right. I had the
5 wrong --

6 MR. STERN: I think you said the Court will hold the
7 oral argument on the motions in Walters, Sirs, and Marble.
8 But I think your actual agenda says something different.

9 THE COURT: And the agenda is right and I was wrong.
10 Marble will be October 30th. Okay. And actually, Mr.
11 Goodman, now that I'm thinking, if you need the six weeks
12 because we've got until October 30th.

13 MR. GOODMAN: I will donate my two weeks to the
14 court.

15 THE COURT: Thank you. I appreciate it. Okay. So
16 the next issue is the coordination of discovery between the
17 state and federal court. And in chambers with Judge Yuille's
18 capable presence, we discussed with the lawyers there the fact
19 that if the these cases are to proceed in an orderly,
20 efficient, and effective manner, there absolutely should not
21 be duplicative discovery in the state cases and the federal
22 cases. It must be coordinated.

23 That said, no one -- no defendant or plaintiff should
24 be held hostage to a case that's moving perhaps more slowly in
25 federal court than it could in state court. So with those

1 competing interests in mind, I have identified a group of
2 representative lawyers to submit in approximately two weeks a
3 proposal by how to coordinate the state and federal
4 litigation.

5 They will -- that would be a proposed order for me to
6 enter in these cases. And it would include issues such as
7 attendance at depositions in state court by lawyers who are
8 not currently appearing in state court but are in this court.
9 And all of you can attend. The issue is how you're going to
10 get notice of it in a timely manner.

11 Depositions are matters of public record unless
12 there's a protective order entered by a court making it a
13 secret experience and that just -- I don't expect that that
14 will happen in this case. It certainly wouldn't be an order I
15 would enter.

16 So it's not whether you can attend, but you can't
17 attend if you don't know. And depositions are generally not
18 identified on the docket. And so there would be no way to
19 know unless we have an order requiring that there be -- that
20 all of that be circulated. And that discovery in the state
21 cases be shared with plaintiffs' counsel and defense counsel
22 in the federal cases and vice versa.

23 So those will be the issues that will be addressed.
24 And we have at least identified at this point Mr. McAlpine
25 who's present as class counsel in front of Judge Yuille. Mr.

1 Grunert, who is here and in state court. Mr. Stern, Mr.
2 Mason, Mr. Kim for the City of Flint, Ms. Smith for McLaren.
3 As those who will at least get this process of drafting taken
4 care of. That proposal will be circulated among counsel and
5 then submitted to the Court.

6 MR. STERN: And Ms. Bettenhausen.

7 THE COURT: And Ms. Bettenhausen. I just had you
8 there in my mind but didn't write it down for the State of
9 Michigan.

10 MR. KIM: And I believe we were talking about July
11 9th for the --

12 THE COURT: July 9th. That's right. We added a week
13 because of the holiday.

14 MR. LEOPOLD: Your Honor, Ted Leopold. Just to be
15 clear, that will be coordinated and filtered through your
16 Honor so that co-lead will have the opportunity to consult
17 with our liaison in the state court to make sure everything is
18 coordinated.

19 THE COURT: Yes. Right.

20 MR. LEOPOLD: Thank you.

21 MR. SHKOLNIK: Your Honor, with respect --

22 THE COURT: Shkolnik.

23 MR. SHKOLNIK: Sorry. Hunter Shkolnik. And with
24 respect to any comments that lawyers have on the individual,
25 they should be -- I think in chambers the Court suggested they

1 should be funneled through liaison counsel.

2 THE COURT: Yes.

3 MR. SHKOLNIK: So that we can do the same type of
4 coordination.

5 THE COURT: Exactly.

6 MR. SHKOLNIK: Thank you, your Honor.

7 MR. GRASHOFF: Your Honor, Phil Grashoff, again. I
8 want to raise the same objection to the Carthan amendment
9 motion to amend that contains the same objectionable language
10 concerning the criminality.

11 THE COURT: Oh, does it?

12 MR. GRASHOFF: Yes, it does. And we need to get that
13 stricken out of that amended complaint. And I raise it for
14 consideration of the group that's going to be dealing with
15 that, number one.

16 THE COURT: Is that -- do you think this is a cut and
17 paste problem?

18 MR. STERN: Yes.

19 MR. GRASHOFF: I think it is, yes.

20 THE COURT: I think it is.

21 MR. GRASHOFF: I think it is. I think it just
22 automatically got in where it shouldn't have been. You've
23 already ruled that it's excluded, so.

24 THE COURT: Yes. Right. And I don't think anybody's
25 trying to offend anyone or harm anyone's rights.

1 MR. GRASHOFF: I'm not suggesting that. I'm just
2 suggesting that it gets out of it. That's all.

3 THE COURT: Yeah. It will come out of it.

4 MR. GRASHOFF: I want to draw the Court's attention
5 to yet another series of cases or one case in the Court of
6 Claims, the Nappier decision that came down recently and it
7 stayed all discovery.

8 THE COURT: In the Court of Claims in Judge Murray,
9 yeah.

10 MR. GRASHOFF: In the Cour of Claims, Judge Murray.
11 And it should be taken into consideration when this group
12 meets with respect to the proposal before the Court.

13 THE COURT: Okay. If his case is stayed, at least --
14 his case isn't going to go launching into discovery --

15 MR. GRASHOFF: No.

16 THE COURT: -- that would be duplicative.

17 MR. GRASHOFF: No.

18 THE COURT: But if there are lawyers present on those
19 cases who would ultimately, if it becomes un-stayed, then need
20 to catch up. They should be notified of this process and be
21 worked into this proposal.

22 MR. GRASHOFF: If that's the case, then maybe instead
23 of having to play catch up as we have had to do so many times,
24 maybe someone from our group of seven MDEQ employees should be
25 part of that group making the proposals so we know what's

1 going on.

2 THE COURT: Okay. Well, you will. You will get the
3 proposal before it's submitted to the Court.

4 MR. GRASHOFF: Fine.

5 THE COURT: Okay. Thank you. Okay. The next issue
6 was there are currently four documents only nonparty subpoenas
7 that have been authorized by this Court as an early discovery
8 tool to preserve documents and to begin that process.

9 And I think it is appropriate to expand that. If the
10 nonparty subpoenas can be agreed upon, then I do not need to
11 authorize that or enter an order that I think could be
12 potentially misleading to a defendant that appears to order
13 them to produce these and might indicate that they don't have
14 their usual defenses or procedure, so.

15 Was somebody trying to speak? Okay.

16 So those may go forward if they're agreed upon. If
17 they're not agreed upon, you'll submit -- you'll contact
18 chambers. Shawna, my case manager, will set up a telephonic
19 conference call on the record. If we can't resolve it, then
20 you'll submit opposing briefs and I'll sort it out.

21 So the next one is the pending preliminary discovery
22 issues. And this somewhat goes along with the state and
23 federal court coordination. Is there -- this was suggested.
24 Mr. Leopold, was this suggested by the class plaintiffs? It's
25 about the sharing of information gathered from FOIA requests

1 and other issues the parties may identify.

2 MR. LEOPOLD: Yes, your Honor. Ted Leopold. Your
3 Honor, I believe on all those issues the parties have worked
4 quite diligently to formulate agreements. Unless I'm
5 mistaken, I don't believe there's any issue about
6 interchanging or exchanging FOIA and nonparty documentation.

7 I think there really becomes just one issue, if I'm
8 not mistaken. And that is the issue related to how broad, if
9 you will, the third party discovery should be as relates to
10 the plaintiffs.

11 It's my understanding in the multiple briefings and
12 reply briefings to this particular issue, the defendants have
13 wanted to have third party releases, if you will, by class
14 representatives for medical records, educational records, a
15 whole bunch of other issues.

16 We have responded in kind saying that if you're
17 really getting more into merits type of discovery and if
18 that's the case, we, too, would like to have the opportunity
19 to get written discovery from you, the defendants, on
20 interrogatories and things of that sort.

21 The Court should be reminded as the Court I'm sure
22 knows, it's only the state defendants that have really
23 produced documentation, large amounts. But there's multiple
24 other parties in the case. All for good reasons, those
25 defendants have decided on a variety of basis not to come

1 forward and per se voluntarily produce information or
2 documents.

3 Nothing wrong with that. But we would like to begin
4 to do everything we can to be ready for depositions when it's
5 an appropriate time to do that. And during the summer months
6 in motions to dismiss rulings, we understand there are those
7 issues and there are going to be issues that perhaps remain
8 in, that perhaps don't remain in. But there are core issues
9 also that we would like to begin to filter down on as well.

10 THE COURT: I understand that. The problem is that
11 we don't have the motions to dismiss adjudicated. So if we
12 start with parties that we know have a litigation hold in this
13 case and cannot legally destroy documents, that's one thing.

14 What I've authorized so far is third party subpoenas.
15 And I think the third party documents you're talking about are
16 your clients, doctors, teachers --

17 MR. LEOPOLD: It's my understanding that as part of
18 the third party discovery they will need releases from --

19 THE COURT: Right.

20 MR. LEOPOLD: -- whether it's HIPPA or other type of
21 releases. And our responses really gets into more of merits
22 related issues. I can certainly see why they want to get that
23 information, but that is sort of going a little bit above and
24 beyond where we're at right now.

25 THE COURT: But the problem is that when you're

1 saying merits, it could go to causation. And that touches
2 very close to merits. And so in not just damages. So I
3 haven't made any ruling that only liability discovery is
4 appropriate and not damages. So or only merits. I'm not sure
5 if that's broader than liability, so.

6 MR. LEOPOLD: Your Honor, I would say in all candor,
7 it is certainly not a burden issue per se. It's more of one
8 of an equity issue in terms of where we are now. We can
9 certainly do this. And we understand where the Court is at at
10 this point on this particular issue.

11 It is certainly for them to get the information from
12 us that is really all that they're getting from our
13 perspective as a third party. We on a third party have much
14 more type of information again from relationships that the
15 defendants may have with third party vendors and things of
16 that sort.

17 THE COURT: Well, let me hear -- who is -- is it Mr.
18 Shkolnik?

19 MR. SHKOLNIK: Well, your Honor, could I also be
20 heard?

21 THE COURT: Yeah.

22 MR. SHKOLNIK: I think this is probably -- and if I
23 could --

24 THE COURT: Sure.

25 MR. SHKOLNIK: The issue regarding medical

1 authorizations and school authorizations I think are really an
2 issue that's going to hurt the individual plaintiffs more than
3 the small handful of class plaintiffs. And that's why I
4 wanted to address it with the Court.

5 From our perspective, Mr. Stern and myself, we
6 believe that the vast majority of the discovery of our
7 plaintiffs, the -- whether it's causation, whether it's our
8 proofs from the plaintiffs will all derive from medical
9 authorizations, hospital records.

10 So in essence, by granting this request that -- in
11 the guise of third party discovery, the defendants here will
12 be in essence saying give us a list of every doctor, every
13 school, every person, every friend that may have documents,
14 and give us an authorization. Which is exactly what we've
15 been putting on hold with respect to the defendant until after
16 the motions.

17 THE COURT: And has any defendant made a specific
18 request for that?

19 MR. SHKOLNIK: In the conversations --

20 THE COURT: I think it has been raised in general.

21 MR. STERN: It's important to know, your Honor --
22 Corey Stern -- that actually in state court -- again this is
23 one of those issues with state and federal court. For
24 instance, we've submitted three or four hundred plaintiff fact
25 sheets that include authorizations pursuant to Judge Yuille's

1 CMO.

2 And so on some level what we're arguing against
3 happening has been happening in state court. And so I only
4 raise that -- it doesn't make it right here or it doesn't mean
5 that that should happen here.

6 It's just to, one, show that there are some things
7 that are slightly different in the various venues based on
8 where the litigation is. And two, that needs to be taken into
9 consideration when determinations are made here as to what's
10 appropriate for the litigants in this court to provide to the
11 defendants.

12 MR. SHKOLNIK: Your Honor, along those lines.

13 THE COURT: Yes. Thank you.

14 MR. SHKOLNIK: We would be happy to sit down with
15 defense counsel and come up with a preliminary plaintiffs'
16 fact sheet and defendants' fact sheet for some basic
17 information that would help us as well.

18 THE COURT: I think we have a preliminary plaintiffs'
19 fact sheet already in theory that was agreed upon.

20 MR. SHKOLNIK: Exactly, your Honor. And now the
21 defendants want to go the next step and say give us
22 authorizations for everybody, which is the meat and potatoes
23 of our discovery.

24 THE COURT: No , I understand that. But it sounds
25 like there's 200 of them that could be used already. But what

1 I haven't actually heard is a demand or a request or an
2 argument from the defendants. I've heard you and Mr. Stern
3 say and Mr. Leopold saying no. But nobody said yes.

4 MR. SHKOLNIK: It was in our meet -- I'll leave it to
5 the defendants. But in the meet and confers, they
6 specifically said will you be giving us authorizations.

7 THE COURT: I see.

8 MR. SHKOLNIK: So I think that's what prompted this
9 discussion. Thank you.

10 MR. STERN: And your Honor, Corey Stern, again. One
11 way that this might easily be dealt with by the court is since
12 that information is contained in the proposed fact sheets that
13 have been agreed to, your Honor has not yet green lit the idea
14 of doing the fact sheets.

15 THE COURT: No.

16 MR. STERN: And so it may be a moot issue until such
17 time as your Honor actually says start producing fact sheets
18 at a certain amount per month. Because until that happens, I
19 don't see any other road where by the effectuation of that
20 request actually takes place.

21 THE COURT: Okay. Mr. Grunert.

22 MR. GRUNERT: Your Honor, first of all, this subject
23 seems like something that's probably going to be the subject
24 of the coordination discussions that you have already told us
25 that we should have.

1 THE COURT: It will be.

2 MR. GRUNERT: Because as Mr. Stern points out, there
3 have been authorizations provided by many of the plaintiffs in
4 the state court cases and not in this case. So debating
5 whether authorizations generally should be provided is
6 probably premature.

7 But I want to identify a fundamental fact that the
8 plaintiffs' attorneys have missed. Under the order that you
9 issued related to nonparty documents only subpoenas, each
10 nonparty can receive only one subpoena.

11 So there are not going to be subpoenas issued to the
12 doctors for each individual plaintiff because that would mean
13 the doctor would get subpoenaed over and over again for each
14 plaintiff.

15 THE COURT: I'm not sure about that. I don't think
16 one subpoena could go to a doctor for 85 pediatric patients.

17 MR. GRUNERT: Well, you have identified the problem
18 we are going to have to address in the not too distant future.

19 THE COURT: Okay.

20 MR. GRUNERT: But it has not been addressed now. How
21 can we deal with medical discovery?

22 THE COURT: All right.

23 MR. GRUNERT: And it will not only concern documents,
24 it will also ultimately concern how do we take depositions of
25 doctors who have treated a thousand Flint residents.

1 THE COURT: Yeah.

2 MR. GRUNERT: The subpoenas that I'm concerned about
3 for which we're likely to have a need for authorizations are
4 subpoenas to, for example, like the EPA that may have
5 information about individual Flint residents that they
6 consider to be private and that they won't release without an
7 authorization.

8 Or more pertinently to the Genesee County Department
9 of Health, which probably has information about individual
10 plaintiffs that they will require an authorization for. So
11 we're not talking about subpoenas to a bunch of treating
12 physicians. We're talking about those kind of subpoenas.

13 And you know my clients, the VNA defendants, you
14 know, we've turned over more than 12,000 pages worth of
15 internal documents in response to Mr. Leopold's discovery.
16 And LAN has turned over even more. So the notion that it
17 somehow is unfair for us to get substantive information about
18 plaintiffs' claims, that doesn't wash.

19 THE COURT: Okay. No one's saying that. I mean,
20 they're saying it. I'm not saying it. So let's -- what I'd
21 like is to -- what I'll do is following this hearing I'll
22 determine if any further specificity is needed on what you're
23 requesting at this time. If there is, I'll put it in the
24 order and permit a response.

25 MR. GRUNERT: Thank you.

1 THE COURT: But I can tell you generally that it
2 seems to me that discovery will need to in some way -- once it
3 officially begins when we have figured out what the Sixth
4 Circuit is doing and what's in these cases and what isn't in
5 these cases, and we have a Rule 16 conference and a 26(f)
6 report, we will then start discovery.

7 And it will need to be phased in some form to be
8 manageable for all of you, for the targets of your discovery,
9 and for the process as a whole. And what I'm -- it makes
10 sense to me that liability and causation need to be sorted out
11 before damages. But you may have a team that's working on
12 damages. So it's not my business to tell you how to do your
13 job.

14 But at this point when we don't yet have the
15 litigation defined, it seems to me that the issues of
16 liability would be the most urgent issues to be addressed.

17 MR. GRUNERT: But in this case, of course medical
18 records are among the most important liability evidence there
19 is.

20 THE COURT: Yes.

21 MR. GRUNERT: So we're not talking about how do you
22 value a particular injury. That is not of great interest at
23 this point. But we have issues about who have -- who has
24 illnesses that are of the type that can be caused by the kinds
25 of contaminants that are alleged.

1 THE COURT: And I would put that --

2 MR. GRUNERT: And who had those illnesses before
3 April 25, 2014.

4 THE COURT: Yeah. I would put that closer to
5 causation and damages than I would to who's responsible in
6 this case and is -- are those decisions what caused these
7 damages. But we can still get that resolved. And I will set
8 a schedule for determining exactly what it is that -- what
9 you're seeking, how much, when, and what it is.

10 MR. GRUNERT: Thank you.

11 THE COURT: Mr. Klein.

12 MR. KLEIN: Just briefly, your Honor. In terms of
13 the releases and/or the fact sheets, there's really two pieces
14 here. One is to get the releases, which lays the groundwork
15 for actual discovery. The other is actual discovery.

16 And when Mr. Stern and I think with good reason talks
17 about, well, we'll have to come in tranches of so many a
18 month. If -- we'll speed things up if we get the groundwork
19 laid now so that we're not then waiting six months. And
20 again, I'm not accusing anyone of delay.

21 THE COURT: No. It hasn't been ordered yet.

22 MR. KLEIN: But there's a lot that has to happen
23 before we can start taking -- where we can start even issuing
24 subpoenas to the various institutions, physicians, etcetera,
25 that have the information. So I would just ask the Court to

1 consider that.

2 THE COURT: Okay. Thank you.

3 MR. STERN: I'm so sorry, Judge. I know it's become
4 like the Corey Stern show today, and normally I'm very quiet.
5 But Corey Stern with regard to the issue that just was raised.
6 Some of this is putting the cart a bit ahead of the horse
7 insofar as this.

8 As an example, if there's a kid in the Bronx who
9 lives in a 500 unit residence and the kid has lead poisoning,
10 if I make a request to the Department of Health for records
11 associated with the entire building because I'm interested to
12 know whether there was lead in the whole building and how it
13 may have affected the child, a way that often times they're
14 able to remedy the issues that are being described is by
15 providing redacted documents that take certain information out
16 but still allow for the important information to be served
17 such that it may not actually require getting releases from
18 every parent in the building.

19 And so I think it may make some sense practically to
20 see how these nonparties respond to the subpoenas that were
21 actually served and then maybe make a really informed decision
22 at that point in time about what's required because they may
23 not make any of these issues into issues. And until they do,
24 we may be creating a problem that doesn't yet exist.

25 THE COURT: Okay. Thank you. Mr. Leopold.

1 MR. LEOPOLD: Your Honor, just one issue. And I
2 don't mean to open a can of worms on this. But I'm wondering
3 in light of the Court's earlier ruling both in chambers and
4 here in open court about the coordination between state and
5 federal court and the CMO, does the Court anticipate us -- and
6 I think it would be helpful.

7 But does the Court anticipate us sort of moving it
8 out into the future post rulings on the motion to dismiss and
9 not drilling down on specific liability issues per se but what
10 that discovery schedule is going to look at? Because I'm
11 assuming the Court is going to want us to address sort of
12 deposition schedules and things of that sort in this joint
13 scheduling --

14 THE COURT: I think that the current joint proposal
15 that I'm looking at is not that detailed in terms of so and
16 so's deposition whatsoever.

17 MR. LEOPOLD: Right.

18 THE COURT: Because we're not yet there. But it's a
19 framework for cooperation and for sharing information. So I
20 think what I'll do is take into consideration what's been said
21 here, a request for -- I'll set forth in my order that I
22 anticipate indicating that I need to know with some more
23 specificity what the defendants are looking for and what
24 timeframe they think they need it in to handle their defense.

25 I'll also hear from the plaintiffs as to any details

1 on that. But I'm educated on the issues and I think I have
2 enough to make a decision.

3 MR. LEOPOLD: Thank you.

4 THE COURT: I want to move to -- this issue of a
5 census order. And that was raised in a couple of submissions
6 for what should be on this agenda. And I think it would be
7 very helpful to have a census of all pending cases.

8 This is a huge undertaking as I think about it. And
9 you know better than I whether it is or not. But my concern
10 is that there be a list that, of course, will evolve that
11 includes identifying clients. And this is really primarily
12 for the individual cases. But at least to the extent the
13 interim class counsel have responses to this, it would apply
14 to them as well.

15 Discussing exposure -- well, the name of the
16 individual, who their lawyer is, the nature of the injury,
17 their date of birth, whether the exposure was through where
18 they lived or where they worked or where they traveled.
19 Whether they have a blood level test or not. Property damages
20 and what that might be and whether it's a business or
21 residential and the nature of their pipes.

22 So those are just -- I'm just brainstorming from a
23 list. There could be fewer items needed. But I think that
24 the sooner we start to figure out what the cases are and where
25 they're pending both in state and federal court, the better

1 off we'll be as this all -- as these cases develop.

2 It is my view that a special master would be somebody
3 who would maintain that census and could have some quality
4 control. There will undoubtedly be as people submit -- submit
5 their reports, people who are represented by multiple lawyers
6 through no fault of anyone. They just signed up as often as
7 they could. And it's understandable. So we'll be able to
8 figure out who -- who we have in these cases as a result of
9 such a thing.

10 I think it does -- it will require quite a bit of
11 work. So I will hear -- it's primarily the burden of the
12 plaintiffs if -- well, starting with Mr. Stern or Mr. Shkolnik
13 if you wish to speak in response to that.

14 MR. SHKOLNIK: Your Honor, we are fully supportive of
15 the census order along the lines of as you discussed. We had
16 initially filed for a motion for such an order. We then
17 withdrew it. We wanted to have a meet and confer with all
18 counsel. We had that. We thought we could work out a
19 cooperative where people do it voluntarily.

20 I know there's concerns. But now with a special
21 master coming in place, I think this will facilitate that and
22 allow us to meet those goals.

23 What we have seen through the process over the last
24 few months with the facilitators is that this would help us.
25 So we support that. And I think we can have some more meet

1 and confers, come up with the categories. Maybe the
2 facilitators would have some input and the special master and
3 maybe we could submit a stipulated order to that effect
4 between class counsel and interim counsel.

5 THE COURT: Okay. And I understand that you're in a
6 very different position from interim class counsel who don't
7 need to sign up scores of people.

8 MR. SHKOLNIK: True.

9 THE COURT: Because they're seeking to have a class
10 certified. And so they may not yet have in their files the
11 names of who would be in that -- understandably they wouldn't
12 have it.

13 MR. SHKOLNIK: I think we're focusing more on if they
14 have individuals that they represent or are named just like
15 the individual -- the rest of the individual plaintiffs.

16 THE COURT: Right.

17 MR. SHKOLNIK: We don't want to do it in a way that
18 is not -- that they don't participate in the process.

19 THE COURT: Okay.

20 MR. SHKOLNIK: It may only be a handful. It may be
21 thousands. I don't know. But we think a uniformed process
22 for everybody so that the facilitators and special master has
23 those names, the law firms, the claims. And it allows
24 everyone to look at what we're looking at here. And we know
25 it's a huge scope. It will help get our arms around it.

1 THE COURT: Okay.

2 MR. SHKOLNIK: Thank you.

3 THE COURT: Mr. Leopold.

4 MR. LEOPOLD: First, most importantly I don't think
5 anything as the Court has already indicated should occur on
6 this issue into a special master is appointed because I think
7 this is fraught with land mines in many, many different areas.

8 THE COURT: I do, too.

9 MR. LEOPOLD: And in light of the historical
10 perspectives, there has to be a very well defined criteria
11 that is set forth even if we were going to go down that road
12 that special master could help with, number one.

13 Number two, a lot of the information from what I
14 understand the individual plaintiffs or liaison counsel want
15 to ascertain, I also understand they have several thousands of
16 clients.

17 Perhaps first before they come to the potential
18 class, they get all that information from their own counsel,
19 let us -- if they want to share it or let us know what the
20 criteria is that they have used to start with that as a
21 benchmark so that it can be shared with everyone, I think that
22 would be a helpful idea as well.

23 THE COURT: But that's what would be in the census
24 order.

25 MR. LEOPOLD: Correct. They're going to -- I don't

1 know if they've done that with their clients, number one. And
2 number two, what that criteria is that they have used.

3 Number three, is there is a lot of historical
4 scientific data which we have used for the mediation process
5 that has been provided to the mediators that has been helpful
6 information. That also should be a part of this criteria if
7 the special master believes or the Court believes that to be
8 an appropriate avenue to take. I just put all that --

9 THE COURT: And is that data, data that says -- I
10 don't know what data you're talking about. So I'm going to
11 guess it says there are 10,000 people age zero to five. Or
12 what are you talking about?

13 MR. LEOPOLD: There is that type of census data.
14 There's what's referred to as red zone or hot areas.

15 THE COURT: Oh.

16 MR. LEOPOLD: Or perhaps injury areas or lead content
17 areas. Variety of different type of scientific information
18 that has already been captured. And I say that all from the
19 perspective of that before we go down that road because it can
20 cause a lot of issues that we just go very -- tread very
21 carefully.

22 THE COURT: Okay. Thank you.

23 MR. PITT: Your Honor, Michael Pitt for class
24 plaintiffs. Your Honor, as part of the Mays team, and the
25 Court is I think familiar with the way we've approached the

1 class action. And we've had contact with perhaps 9,000 class
2 members who have shared some information --

3 THE COURT: Putative class members.

4 MR. PITT: Putative class members. Putative class
5 members. And we have been very aggressive in trying to get
6 information about the class members' experiences over the last
7 three years. And we have a database that was -- has been and
8 is still being used to catalog, you know, the types of
9 injuries and where the injuries are occurring, etcetera.

10 We think it would be inappropriate to include class
11 members --

12 THE COURT: Right.

13 MR. PITT: -- as part of the census.

14 THE COURT: It's the idea that if you listed all your
15 class members and all of the details and the addresses, Stern
16 and Shkolnik can go and sign them up for their individual
17 cases. I mean, I'm honestly just asking. Because I don't
18 want to -- I'm not trying to mess with people. That's not my
19 job. You or anyone else.

20 And so what I -- if what is appropriate for this is
21 to identify that you've got 9,000 people in certain areas of
22 town, maybe that's satisfactory. But I think what we're
23 trying to -- what I'm trying to figure out is what is the
24 range and the scope and the quantity of what's going on here
25 of -- and how can we avoid duplicate work as it goes on.

1 If you say that Levy is your client and Stern says
2 Levy is his client, we've got to know who it is. And we won't
3 know if we don't get some of this down. But go ahead if you
4 want to respond.

5 MR. PITT: No. I just think that there should be
6 some caution applied to the --

7 THE COURT: Okay.

8 MR. PITT: -- revealing of class member identities.
9 One of the reasons they want to be class members and not have
10 individual cases is they want to be silent until the
11 appropriate time. They may not want to self identify as an
12 injured party.

13 There are a number of reasons why people don't sign
14 up and have an individual case filed for them and prefer to be
15 part of the class where they can remain anonymous until the
16 appropriate time. So you know, mindful of all of these
17 factors, the database that we have constructed is helpful
18 information about --

19 THE COURT: Okay.

20 MR. PITT: -- the injury to the class. And there
21 should be a separate category made in the census order for
22 information involving class members.

23 THE COURT: Okay. Well, here's what we'll do is I'm
24 not prepared to enter an order related to the census order at
25 this point. I identified it as an issue to -- for discussion

1 and to hear from counsel about. And I think it is an
2 appropriate issue for a special master to assist in. And it
3 sounds like there should be some process for -- well, there
4 absolutely will be a process for determining what's fair to be
5 required on the census.

6 And I'll make that decision, not the special master,
7 because I want to -- at the point that I turn something over
8 to a special master, I want to be confident that it's what I'm
9 looking for. So I will drive the process but then turn it
10 over to someone who can manage it.

11 MR. SHKOLNIK: Your Honor, in order to bring this
12 issue to a head and I think help the Court, would it be
13 appropriate for us to file our motion for the census? It will
14 lay out the parameters of what we're suggesting, the myriad of
15 cases that have utilized this process, allow you to consider
16 it, let there be opposition from whoever.

17 We'll also include in that that the information is
18 not given to Mr. Stern or myself but to a special master so
19 that it meets -- I think what we're all -- what we're talking
20 about here. But if we filed the motion, it tees it up. If
21 there's objections, there's objections. And then the Court
22 can have something to decide.

23 THE COURT: I think that would be helpful.

24 MR. SHKOLNIK: Thank you.

25 THE COURT: Any objection, Mr. Leopold?

1 MR. LEOPOLD: No objection. I'm just wondering
2 whether we want to wait until a special master is engaged so
3 that the special master can have perhaps some input of
4 additional information that he or she may want.

5 THE COURT: The special master will be engaged before
6 I decide the motion. So if it's filed and various people
7 weigh in -- do the defendants have any desire to be part of
8 this? No. Okay.

9 But I think Mr. Grunert might want to file a brief
10 for some reason. He files a lot of briefs. So I'm not going
11 to hold you to that. Your briefs are helpful, so I'm not
12 being critical.

13 So we'll set out a briefing schedule and a decision
14 won't be made until there is a special master. But to the
15 extent, Mr. Shkolnik, you're giving me cases that are
16 instructive, if they can be cases that have both individual
17 cases and class cases --

18 MR. SHKOLNIK: Yes, your Honor.

19 THE COURT: -- that would be most helpful. Okay.

20 So the only other issue that I had on here is that
21 the next status conference will be September 12th at 2:00 PM.
22 There are dates by which proposed items for discussion should
23 be submitted which is August 29th at 2018.

24 I'll put it all together and issue an order on
25 September 5th that sets forth the items. Okay. Seeing

June 18, 2018

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1 nothing else, we will close this and adjourn for the day.

2 (Proceedings Concluded)

3 - - -

4
5 CERTIFICATE OF OFFICIAL COURT REPORTER

6 I, Jeseca C. Eddington, Federal Official Court
7 Reporter, do hereby certify the foregoing 70 pages are a true
8 and correct transcript of the above entitled proceedings.

9 /s/ JESECA C. EDDINGTON
10 Jeseca C. Eddington, RDR, RMR, CRR, FCRR

6/22/2018
Date